

1 IN THE UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF MISSOURI
3 WESTERN DIVISION

4 UNITED STATES OF AMERICA,)
5)
6 Plaintiff,))
7)
8 vs.) Case No. 09-00143-01-CR-W-ODS
9)
10)
11 ABRORKHODJA ASKARKHODJAEV,) Monday, May 9, 2011
12) Kansas City, Missouri
13 Defendant.)

14 TRANSCRIPT OF SENTENCING HEARING
15 BEFORE THE HONORABLE ORTRIE D. SMITH
16 UNITED STATES SENIOR DISTRICT JUDGE

17 APPEARANCES:
18 FOR THE PLAINTIFF: Mr. William L. Meiners
19 Mr. William A. Alford
20 Mr. James Felte
21 U.S. Attorney's Office
22 400 E. 9th Street, Fifth Floor
23 Kansas City, Missouri 64106

24 FOR THE DEFENDANT: Pro Se
25 Standby Counsel: Mr. Willie J. Epps, Jr.
 Mr. Evan Montgomery
 Shook Hardy & Bacon LLP
 2555 Grand Boulevard
 Kansas City, Missouri 64108

26 COURT REPORTER: Ms. Cynthia M. Johnson, RMR
27 U.S. Court Reporter
28 400 East 9th Street, Room 8552
29 Kansas City, Missouri 64106
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31 Proceedings reported by computer stenography; transcript
32 produced by computer.

1 THE COURT: Good morning. Be seated, please.

2 United States versus Abrorkhodja Askarkhodjaev.

3 09-143-01 is the case number. Bill Meiners appearing for the
4 United States. Willie Epps and Evan Montgomery appearing with
5 Mr. Askarkhodjaev. And we have an interpreter to assist
6 Mr. Askarkhodjaev.

7 Eva, will you administer the oath, please?

8 (Interpreter sworn.)

9 THE COURT: We scheduled this time for sentencing.
10 Late last week I received a pro se filing from
11 Mr. Askarkhodjaev seeking to appeal Judge Hays' order denying
12 his motion to remove counsel. I have reviewed the motion and
13 the attachments to the motion. I see no reason at all to
14 disturb Judge Hays' findings and conclusions. And so I deny, I
15 will affirm her decision and deny the motion to replace
16 Mr. Montgomery and Mr. Epps as counsel for Mr. Askarkhodjaev.

17 Mr. Askarkhodjaev, you have two options I suppose at
18 this point. One is to proceed through the hearing today with
19 Mr. Epps and Mr. Montgomery as your attorneys. The other is to
20 tell me that you want to proceed without legal assistance. You
21 have the right to do that. I think it would be extremely
22 ill-advised for you to do it but if you wish to do that you
23 have the right to do it.

24 I'll tell you that from where I sit Mr. Montgomery
25 and Mr. Epps have done a remarkable job representing your

1 interest throughout this entire case. I can't imagine anyone
2 performing any better than they did. I am not going to replace
3 them as your attorneys. So you need to decide whether you want
4 to proceed with their assistance or without. And that is your
5 decision to make.

6 I'll tell you that it would certainly not be in your
7 interest to attempt to represent yourself in this. You are not
8 trained in the law. You have two excellent attorneys who by
9 reason of their academic achievements in law school and by
10 their experience in the practice of law are more than able to
11 assist in the sentencing hearing. I think that if you proceed
12 on your own, it would be fool-hardy. But you have that right.

13 So I will ask you now if you want to proceed with
14 Mr. Epps and Mr. Montgomery as your attorneys in this hearing
15 or whether you want to try to do it on your own without their
16 assistance?

17 THE INTERPRETER: They have not really helped me so
18 far. I don't think I need them now.

19 THE COURT: I'm going to try this one more time,
20 Mr. Askarkhodjaev. The law is a very complicated field. It
21 requires years of education and these attorneys have years of
22 training and years of experience. They know the law. They
23 know the sentencing guidelines. And they are the only ones on
24 that -- in that area at that table who are equipped to present
25 legal arguments in your favor this morning.

1 It is a terrible mistake for you to attempt to
2 proceed on your own. Again, you have the right to do that and
3 if it is your wish to proceed on your own, then we'll do that.

4 THE INTERPRETER: They have not really helped me so
5 they won't be able to help me now.

6 THE COURT: You're mistaken.

7 THE INTERPRETER: Previously they haven't helped me.
8 Up to this date they haven't been able to help me and that's
9 why I asked for new counsel.

10 THE COURT: Well, you're not going to get new
11 lawyers. I'm not going to appoint new lawyers to represent
12 you. You have as fine a legal team as there exists in this
13 community, anyway, and it makes absolutely no sense for me to
14 replace them.

15 You are mistaken when you say they have not helped
16 you. Had you been convicted on all of these charges in this
17 case, Mr. Askarkhodjaev, you would have been facing 25 years,
18 27 years of imprisonment. And through the efforts of Mr. Epps
19 and Mr. Montgomery they have limited your exposure to twelve
20 years. They have cut in half the potential exposure that you
21 had in this case.

22 And I'll tell you this in addition, having listened
23 to the evidence in Mr. Dougherty's trial, I am well satisfied
24 that the government could have obtained verdicts of guilty
25 against you. And based on what I know about this case and what

1 I know about your involvement in this case, I would have given
2 you a sentence far greater than the one they negotiated for you
3 this morning. So you are absolutely wrong. You're absolutely
4 mistaken when you say they haven't been helpful to you.

5 Now, if you want to proceed on your own, we'll do
6 just that.

7 THE INTERPRETER: I have explained all the reasons in
8 my motion. They have clearly not helped me and I do not need
9 them.

10 THE COURT: Mr. Epps and Mr. Montgomery, you are
11 relieved from your responsibilities in representing
12 Mr. Askarkhodjaev. I'll ask you to remain as standby counsel
13 in the event he has questions and try to answer his questions
14 as standby counsel.

15 MR. EPPS: Thank you, Your Honor.

16 THE COURT: There are objections to the presentence
17 report. The primary objection which affects the sentencing
18 guidelines is that the probation department concluded that
19 Mr. Askarkhodjaev had a total offense level of 35. The parties
20 in the plea agreement agreed that the total offense level would
21 be 32. It is my practice and my tendency to accept the
22 agreement reached by the parties. And I do that for a number
23 of reasons, not the least of which is that the parties are more
24 familiar with the case than the Court or the probation
25 department for that matter. Secondly, accepting agreements

1 encourages those kinds of agreements and I think the judges
2 need to encourage agreements. We simply cannot try all the
3 cases we have for trial. And so I will do that in this case
4 and I will sustain the defendant's objection to the total
5 offense level.

6 I find that the total offense level is the one agreed
7 to by the parties in the plea agreement. And that is a level
8 32.

9 With a criminal history category of 1 the advisory
10 sentencing range would be 121 to 151 months of imprisonment.

11 The parties entered into an 11(c)(1)(C) plea
12 agreement in which the parties agreed that the appropriate
13 sentencing range in this case was between 10 to 12 years of
14 imprisonment. When I accepted that plea agreement I bound
15 myself to impose a sentence within that range and I will do
16 that. I will impose a sentence within the range agreed to by
17 the parties.

18 Mr. Meiners, you indicated you wanted some time for
19 testimony, witnesses, exhibits. I'll offer you that
20 opportunity now.

21 MR. MEINERS: That's correct, Your Honor. Thank you.

22 There are two areas we'd like to bring to the Court's
23 attention during this testimony. During the proffer sessions
24 with Mr. Askarkhodjaev following his plea of guilty and prior
25 to the commencement of the trial against Mr. Dougherty, it

1 became clear that Mr. Askarkhodjaev was denying that he was
2 involved in any marriage fraud in this case. The Court will
3 recall that Danielle Holliger pled guilty to marriage fraud in
4 relation to Mr. Askarkhodjaev. It also became clear during the
5 proffer sessions that Mr. Askarkhodjaev was denying any
6 extortionist activities in regard to Jakhongir Kakhkharov.
7 Specifically extortion involved in \$12,000 regarding a debt
8 that Mr. Askarkhodjaev felt he was owed by Mr. Kakhkharov.

9 The evidence would show that Mr. Askarkhodjaev, along
10 with two others, crossed state lines from Missouri to Kansas in
11 order to collect that extortionist debt and also assaulted
12 Mr. Kakhkharov at that time. Therefore, Your Honor, it would
13 be the intention of the United States to call Danielle Holliger
14 and Jakhongir Kakhkharov to establish that Mr. Askarkhodjaev
15 was untruthful in his proffer sessions. And we'd be asking for
16 the sentence of twelve years or 144 months based on his lack of
17 candor.

18 THE COURT: All right. Proceed.

19 MR. MEINERS: Call Danielle Holliger.

20 Your Honor, for the record we are prepared to go
21 forward on the objections stated if the Court wishes to hear
22 that as well.

23 THE COURT: It will not be necessary for you to offer
24 evidence on the appropriate guideline range. I've accepted the
25 range that the parties have agreed to. It's my intention to

1 simply disregard all of the factual objections and enter a
2 decision based solely upon the agreement between the parties
3 and the evidence I hear with respect to these witnesses.

4 MR. MEINERS: Thank you, Your Honor.

5 DANIELLE HOLLIGER, GOVERNMENT'S WITNESS, SWORN

6 DIRECT EXAMINATION

7 BY MR. MEINERS:

8 Q Ma'am, could you state your name for the record and the
9 Court, please?

10 A Danielle Holliger.

11 Q And do you know the defendant in this case,
12 Mr. Askarkhodjaev?

13 A Yes.

14 Q When did you first meet Mr. Askarkhodjaev?

15 A I met him in March of 2004.

16 Q Where did that meeting occur?

17 A It occurred at my place of work.

18 Q And who introduced you to Mr. Askarkhodjaev?

19 A Her name was Julie Dupree.

20 Q Do you know for what purpose you were introduced to the
21 defendant in this case?

22 A Yes.

23 Q And can you tell -- can you relate that to the Court,
24 please?

25 A It was to marry him so he could get a green card.

1 Q Did you have discussions with Mr. Askarkhodjaev concerning
2 this proposed marriage?

3 A I'm sorry. Can you --

4 Q Did you talk to Mr. Askarkhodjaev about this proposed
5 marriage?

6 A Yes, I did.

7 Q Tell the Court the nature of those discussions.

8 A It was just basically he would pay me an amount of \$10,000
9 to marry him in return for his green card.

10 Q Did he tell you why he wanted to stay in this country?

11 A Yes. So he could open up his own business and stay here
12 in the United States.

13 Q How many times did you meet with Mr. Askarkhodjaev prior
14 to your marriage?

15 A I believe probably about five times.

16 Q Where would these meetings occur?

17 A We would go have dinner. Sometimes he would come to the
18 club when I was at work and we would talk about it.

19 Q Would you categorize any of these meetings as dates?

20 A No.

21 Q Did you have any physical contact with Mr. Askarkhodjaev
22 prior to your marriage?

23 A No.

24 Q What was the agreement, the financial agreement in regard
25 to your marrying Mr. Askarkhodjaev?

1 A It was \$5,000 after we got married then \$5,000 after he
2 got his green card.

3 Q Do you recall when you married Mr. Askarkhodjaev?

4 A Yes. It was July 19 of 2004.

5 Q And was that marriage consummated?

6 A No.

7 Q Did you ever reside with Mr. Askarkhodjaev?

8 A No, I did not.

9 Q Where did you reside back in July of 2004?

10 A I don't recall that address.

11 Q Do you know what city?

12 A It was Independence.

13 Q Do you know where the defendant resided at that time?

14 A I know that he lived in Overland Park.

15 Q Now, did he keep any stuff at your house?

16 A No, he did not.

17 Q Did you keep any stuff at his house?

18 A No.

19 Q Did you ever go to his house?

20 A No.

21 Q Did there come a time when you had to go to the
22 immigration office?

23 A Yes.

24 Q Tell the Court about that?

25 A We went to the immigration office and Alex didn't put in

1 our file in time so we were maybe going to have to come back
2 and I got upset and started crying because I didn't want to.

3 Q In fact, did you cry pretty much during the entire
4 immigration interview?

5 A Yes.

6 Q When was the first payment made to you for this marriage
7 from Mr. Askarkhodjaev?

8 A The first payment was \$2,000 after we got married.

9 Q How was that made?

10 A Cash.

11 Q Do you know approximately when the next payment was?

12 A I believe the next payment was, we opened a joint bank
13 account and it was a thousand dollars.

14 Q And why were you paid a thousand dollars by
15 Mr. Askarkhodjaev at that time? Did he want you to open a bank
16 account with him?

17 A Yes.

18 Q Did you utilize that bank account in any manner?

19 A No, I did not.

20 Q Why did he want you to enter into a joint bank account?

21 A He wanted us to open a joint bank account so I could start
22 using it for various reasons to just make it look like and use
23 the account like it was for us.

24 Q Now, during the time that you married Mr. Askarkhodjaev,
25 were you seeing someone informally?

1 A Yes, I was.

2 Q Who was that?

3 A His name is Craig Strong.

4 Q Did you later have a child with Mr. Strong?

5 A Yes.

6 Q And is that your daughter Mahlon?

7 A Yes.

8 Q And can you tell the Court when she was born?

9 A She was born June 17 of 2005.

10 Q Did your relationship with Mr. Strong become more serious
11 at some point?

12 A Yes, it did. Soon as I got pregnant.

13 Q I'm sorry. When did your relationship with Mr. Strong
14 become serious?

15 A After we found out I was pregnant.

16 Q Do you know approximately when was that?

17 A It was in October of 2004.

18 Q Was he aware of your marriage to Mr. Askarkhodjaev?

19 A Yes, he was.

20 Q And did you tell him?

21 A I did tell him.

22 Q What was his attitude?

23 A He really didn't care because we were seeing each other
24 just informally.

25 Q Did there come a time when Mr. Strong moved in with you?

1 A Yes.

2 Q And when was that?

3 A November.

4 Q Of 2004?

5 A November of 2004.

6 Q Did Mr. Askarkhodjaev know that Mr. Strong had moved in
7 with you at your residence in Independence?

8 A Yes.

9 Q Did he have any discussions with you about where mail was
10 going to be sent?

11 A Yes, sent to our address.

12 Q Why did he want his mail sent to your address?

13 A So it would look like we were living together.

14 Q Can you tell the Court whether or not Mr. Askarkhodjaev
15 ever came over to get his mail?

16 A Yes, he did.

17 Q And did he ever see Mr. Strong?

18 A Yes.

19 Q What was his demeanor or attitude toward Mr. Strong?

20 A He would always say hi, shake each others hands, make
21 small talk.

22 Q Did you subsequently purchase a house with Mr. Strong?

23 A Yes.

24 Q When did that occur?

25 A It occurred in June of 2006.

1 Q Did there come a time when you met Mr. Askarkhodjaev's
2 girlfriend?

3 A Yes. She showed up to my house in September of 2007.

4 Q Do you remember her name?

5 A No.

6 Q Does Barno ring a bell?

7 A Yes.

8 Q What was the nature of the conversation you had with
9 Mr. Askarkhodjaev's girlfriend in September of 2007?

10 A She came to the house and was asking me to divorce him.
11 And she said that some lawyer that she was talking to knew some
12 information about Alex and she wanted me to divorce him.

13 Q What did you tell her?

14 A I told her it was something I would talk over with Alex.

15 Q Did there come a time when you wanted out of this
16 marriage?

17 A Yes.

18 Q To Mr. Askarkhodjaev?

19 A Yes.

20 Q When did that occur?

21 A As soon as I found out I was pregnant.

22 Q And that was back in November of 2004?

23 A Yes. October.

24 Q After Mahlon was born did you have some conversation with
25 Mr. Askarkhodjaev about the birth certificate?

1 A Yes.

2 Q Can you tell the Court what the nature of that
3 conversation was?

4 A He wanted me to put his name on her birth certificate.

5 Q As the father?

6 A As the father.

7 Q What did you tell him?

8 A I told him no. That it was out of the question.

9 Q Would Mr. Askarkhodjaev have conversations with you about
10 the time line when he was going to obtain his green card?

11 A He told me that after we got married it would be around
12 six months and he would have it.

13 Q Did that occur?

14 A No.

15 Q What happened?

16 A It just got drawn out for so long and he always would just
17 ask me to wait longer.

18 Q Now, did you file joint tax returns with
19 Mr. Askarkhodjaev?

20 A Yes.

21 Q And why did you do that?

22 A We did it so if immigration needed the paperwork it would
23 also show that we were a married couple.

24 Q After Mahlon was born who was able to get the deduction
25 for your child?

1 A Her father.

2 Q Did there come a time when you were interviewed by agents
3 of Immigrations and Customs Enforcement regarding this case?

4 A Yes.

5 Q Do you recall when that was?

6 A It was March of 2007.

7 Q Can you tell the Court what happened?

8 A They showed up to my door and came in. And as soon as we
9 sat down and started to talk about all the case for Alex I just
10 started to tell the truth about everything.

11 Q And did you ever deny what you had done with those ICE
12 agents?

13 A No.

14 Q Did you ever deny what you had done ever since that
15 initial interview up to and including today?

16 A No.

17 Q Were you asked to make a tape-recorded statement with
18 Mr. Askarkhodjaev approximately one month later on April 17 of
19 2007?

20 A Yes.

21 Q I'm going to show you what has been marked for
22 identification as Government's Sentencing Exhibit No. 1.

23 MR. MEINERS: Your Honor, we left a copy on your
24 table and we've given a copy to the defense as well on Friday.

25 BY MR. MEINERS:

1 Q Do you recognize Government's Sentencing Exhibit No. 1?

2 A Yes.

3 Q Does that appear to be a transcript of a tape of a
4 conversation you had with Mr. Askarkhodjaev on April 17 of
5 2007?

6 A Yes.

7 Q And have you reviewed the entire transcript of that
8 conversation?

9 A I have.

10 Q In fact, have you done that on several occasions in
11 preparation for trial in this case?

12 A Yes.

13 Q And is this transcript a true and accurate depiction of
14 the conversation you had with the defendant back in April of
15 2007?

16 A Yes.

17 MR. MEINERS: Offer Government's Sentencing Exhibit
18 No. 1, Your Honor.

19 THE COURT: Any objection?

20 THE INTERPRETER: I'd like to object.

21 THE COURT: On what grounds?

22 THE INTERPRETER: It's incorrect.

23 THE COURT: That objection is overruled.

24 Government's Exhibit 1 is admitted.

25

1 BY MR. MEINERS:

2 Q Can you tell the Court how this taped conversation came
3 about?

4 A I'm sorry?

5 Q How did this taped conversation come about? Did the
6 agents ask you to help them out?

7 A Yes, they did. They came over to the house and we had the
8 conversation recorded.

9 Q I want to turn to page 2 of this transcript and I think
10 I've highlighted what I'm going to be asking you about. About
11 a third of the way down did you ask him if he was getting a
12 little worried?

13 A Yes.

14 Q And what do you mean by that? Worried about what?

15 A Being worried as far as it had been several years since we
16 had been to our interview and still hadn't received a green
17 card.

18 Q Later on, the next highlighted portion, you tell him that
19 you're ready to break up. I'm starting to be ready to break up
20 with Craig and get my own house. I want to start over with
21 Mahlon, just you and Mahlon. Did he know about your daughter?

22 A Yes, he did.

23 Q If you could turn to page 5 and the first sentence, this
24 is another call that was made on that date?

25 A Yes.

1 Q Do you see the first highlighted passage where it says, I
2 don't think I should have to pay you back. I think I've held
3 up my end of the deal. I just don't think that's fair. What
4 are you referring to?

5 A Because earlier on in that phone conversation we had
6 discussed getting a divorce and he said, well, if I wanted to
7 divorce him then I would have to pay him back the money that he
8 had already given me.

9 Q How much money did he give you all told?

10 A All told cash it was 5,000. And then the thousand for the
11 computer.

12 Q Did he also make payments for your car insurance?

13 A Yes, he did.

14 Q And the rest of the money, how was that going or when were
15 you to receive the rest of the \$10,000?

16 A I assumed it would have been after he received his green
17 card.

18 Q And then you stated, I agreed to marry you. And the next
19 highlighted passage, I married you. I did my part. I
20 shouldn't have to pay you back. What are you referring to?

21 A Just referring to the amount of time it was taking for him
22 to get his card and I didn't think I should have to pay him
23 back and he should have given me a divorce.

24 Q In fact, you did everything that your agreement stipulated
25 with Mr. Askarkhodjaev, correct?

1 A Yes.

2 Q You married him, correct?

3 A Yes.

4 Q Did you show up at immigration for the interviews?

5 A Yes.

6 Q And then later on he says, I, I paid you to get my
7 paperwork. I paid for you to get this. But I haven't gotten
8 it yet. Do you see that passage?

9 A Yes, I do.

10 Q What is Mr. Askarkhodjaev referring to?

11 A He's referring to our marriage and --

12 Q The purpose for your marriage?

13 A Yes.

14 Q And then you state, I know you paid me for your paperwork
15 but, you know, Alex, the deal was for me to marry you and not
16 have to wait 5 years to get a divorce from you. What are you
17 referring to?

18 A I'm just referring to how long the process was taking.

19 Q That was page 5.

20 Turn to page 7 and the first highlighted passage. Do
21 you see that where he says I, I paid you 6,000 for about the
22 deal, out of deal and?

23 A Yes.

24 Q What is he referring to?

25 A He's referring to the installments that he had given me up

1 until this phone conversation.

2 Q And that was, when was that agreed upon that he was going
3 to make these payments?

4 A The payments were just kind of as we went along.

5 Q Next I want to show you what's been marked for
6 identification as Government's Sentencing Exhibit No. 2. Could
7 you identify that for the record and the Court, please?

8 A It's a phone conversation between Alex and I.

9 Q And did that conversation occur on March 26 of 2008?

10 A Yes, it did.

11 Q And, again, was that at the direction of the ICE agents
12 that were handling this case?

13 A Yes.

14 Q Have you had occasion to review the transcript of that
15 taped call that you had with Mr. Askarkhodjaev back in 2008?

16 A Yes, I have.

17 Q And, in fact, again, is this something that you reviewed
18 on several occasions in preparation for trial in this matter?

19 A Yes.

20 Q Is this transcript a true and accurate representation of
21 the conversation you had with Mr. Askarkhodjaev on that date?

22 A Yes.

23 MR. MEINERS: Offer Sentencing Exhibit No. 2, Your
24 Honor.

25 THE COURT: Any objection?

1 THE INTERPRETER: No.

2 THE COURT: Two is admitted.

3 BY MR. MEINERS:

4 Q Could you turn to page 2 of that exhibit? We talked about
5 the tax situation. It says that you want to go ahead and file
6 your taxes separate this year so you can claim Mahlon?

7 A Yes.

8 Q What are you referring to there?

9 A I didn't want to file our taxes because I wanted to claim
10 my daughter that year in 2008. I wanted to claim her for my
11 taxes.

12 Q And is it my understanding that you and Mr. Strong are no
13 longer together in March of 08 and that you wanted to take the
14 deduction for Mahlon?

15 A Yes.

16 Q Turning then to the next page, page 3, I want to go to the
17 bottom of that page. Do you see where you're asking him, is
18 there any reason why he does not want to file separately from
19 you?

20 A Yes.

21 Q And does Mr. Askarkhodjaev say because soon we'll get an
22 answer from immigration?

23 A Yes.

24 Q And is that the reason why he wanted you to file taxes
25 together with him?

1 A Yes.

2 Q The last exhibit I want to show you is Government's
3 Sentencing Exhibit No. 3. Does that appear to be a transcript
4 of a conversation that you had with Mr. Askarkhodjaev some time
5 later, about three or four months later on June 26 of 2008?

6 A Yes.

7 Q And, again, have you had occasion to review this
8 transcript?

9 A Yes, I have.

10 Q And, again, on several occasions?

11 A Yes.

12 Q And is this transcript a true and accurate depiction of
13 the conversation you had with Mr. Askarkhodjaev on June 26 of
14 2008?

15 A Yes, it is.

16 MR. MEINERS: Offer Sentencing Exhibit No. 3, Your
17 Honor.

18 THE COURT: Any objection?

19 THE INTERPRETER: No.

20 THE COURT: Three is admitted without objection.

21 BY MR. MEINERS:

22 Q Could you turn to page 2. I'm directing your attention to
23 the highlighted area. You indicated that you're scared of
24 Alex. What are you referring to?

25 A I was referring to him as if we were going to get caught

1 for what we were doing.

2 Q It says, soothingly he says, don't be. So it's not going
3 to be anything if we file now. What is he referring to?

4 A File for a divorce.

5 Q On the next page, which would be page 3 of that document,
6 he says they know already we're not living together. They
7 asked me why we're not living together. They've been listening
8 to my phone. We've never talked to each other. And I said,
9 yes, we not live together because our marriage didn't work out.
10 We are going to divorce. There is nothing wrong. Why is he
11 telling you this?

12 A He's telling me this because he was trying to assure me
13 that we were going to file for a divorce and everything would
14 be okay.

15 Q Then he says if they come --

16 DEFENDANT ASKARKHODJAEV: Objection.

17 THE INTERPRETER: They just said we are not living
18 together. It doesn't say that here.

19 It was said here that we have never lived together.

20 She said never, we have never lived together. That's
21 not true.

22 THE COURT: Mr. Askarkhodjaev, if your objection is
23 that the transcript is inaccurate, then you can point out those
24 inaccuracies on your cross-examination of the witness.

25 If that is your sole objection then that objection is

1 overruled.

2 Proceed.

3 MR. MEINERS: Thank you, Your Honor.

4 BY MR. MEINERS:

5 Q Does he indicate later on on that page, if they will come
6 I will put it here November 10, 2007, I'm not living with you
7 any more. Back November 10. And you say okay. What is he
8 referring to?

9 A He's referring to coming up with a date, he's referring to
10 coming up with a date that we weren't living together any more.

11 Q That was the date of your separation?

12 A That's what he said.

13 Q Had you ever lived together?

14 A No, we had never lived together.

15 Q Turning to page 7. You indicate in the lower highlighted
16 passage, I don't want us to get in trouble either, you know.
17 And Mr. Askarkhodjaev says, yeah, of course. Yeah. We don't
18 need to. And then you reply, and I don't want to go to jail
19 and leave Mahlon. He says, of course. What is that
20 conversation referring to?

21 A It's just referring to he was saying that immigration had
22 came and spoke with him and I was telling him I didn't want us
23 to get in trouble for doing this and getting caught for just
24 having the marriage be fake.

25 Q On the next page, page 8, you indicate that if immigration

1 comes I'll just tell them what you said. We separated -- Had
2 you forgotten the date he gave you?

3 A Yes.

4 Q And does he supply that for you?

5 A Yes, he did.

6 Q He said November. Then you said November 10?

7 A Yes.

8 Q Then he said 2007?

9 A Yes.

10 Q And you said okay?

11 A Yes.

12 Q Finally, on page 12, the final highlighted portion, does
13 he give you any advice about talking on the phone?

14 A Yeah. He had just told me that his phone, he found out
15 was being recorded or somebody was listening so not to say
16 anything over the phone.

17 MR. MEINERS: No further questions, Your Honor.

18 THE COURT: Cross-examination? Mr. Askarkhodjaev?

19 CROSS-EXAMINATION

20 BY DEFENDANT ASKARKHODJAEV:

21 Q (Through the Interpreter) Did you submit this paper, did
22 you file this paper in court to separate or divorce?

23 A I'm sorry. I don't know what paper that is.

24 MR. MEINERS: Your Honor, may I approach?

25 THE COURT: Pass it to the witness, please.

1 THE WITNESS: Yes, I did.

2 THE INTERPRETER: Could we have it back so we can
3 refer to it?

4 BY DEFENDANT ASKARKHODJAEV:

5 Q (Through the Interpreter) The second page of this document
6 states Petitioner and Respondent were married on July 19, 2004
7 in Kansas City and Petitioner separated on or about November 1,
8 2004 and you stated earlier that we never lived together.

9 A Yes.

10 Q Why did you write so in this document?

11 A Because it's the truth.

12 Q So that means that we lived together some time?

13 A We never lived together, no.

14 Q This document says we separated on November 1, 2004.

15 A lot of things were said today in the courtroom room
16 and I didn't know that it would be a sentencing hearing and I
17 wasn't quite prepared. I just wanted to add those questions.

18 I have no further questions.

19 THE COURT: All right. Mr. Meiners, redirect?

20 MR. MEINERS: No, Your Honor. Thank you.

21 THE COURT: Thank you, Ms. Holliger. You may step
22 down.

23 (Witness excused.)

24 MR. MEINERS: Call Jakhongir Kakhkharov.

25 JAKHONGIR KAKHKHAROV, GOVERNMENT'S WITNESS, SWORN

1 DIRECT EXAMINATION

2 BY MR. MEINERS:

3 Q Sir, could you state your name and occupation for the
4 record and the Court, please?5 A My name is Jakhongir Kakhkharov. I working at Bedrock
6 International.7 Q I'm going to ask you to kind of talk slowly if you can.
8 It's important that we get everything down that you say.9 When did you meet the defendant in this case,
10 Mr. Askarkhodjaev?

11 A June 2005.

12 Q And how did you come to meet him?

13 A We have a contract before to come to the United States
14 with Giant Labor Solutions. They would provide our job in
15 United States by the J1 visa, housekeeping or house person at
16 hotel. When we arrived in Kansas City, first Bakhrom came to
17 meet us, then after a couple days he show up and introduce
18 himself.19 Q And what were the living conditions like when you first
20 started working for Mr. Askarkhodjaev?21 A Living in a, I believe, seven students in one two bedroom
22 apartment.23 Q Did there come a time when you became more than just a
24 worker for Giant Labor Solutions?

25 A At that time, no, nothing. Just --

1 Q Later on did there come a time when you were a manager of
2 Midwest Management?

3 A Yes. 2007 in February Mr. Askarkhodjaev, he offer me job
4 by his office doing managing stuff but at that time the other
5 guy was managing his company and I left Kansas City to Florida
6 but after probably 3 months he gave me a call offering a job
7 doing subcontractor with him.

8 Q What were your duties and responsibilities with, was it
9 Midwest Management that you were with?

10 A Yes.

11 Q What were your duties and responsibilities with Midwest
12 Management?

13 A I'm suppose to be going to the hotel, taking care of the
14 housekeepers, housekeeping, house persons. If they have a
15 problem with, issues with management, I have to solve it.
16 That's it.

17 Q Can you tell the Court what happens when the J1 students
18 go home in relation to their last paycheck?

19 A When they're leaving, what would happen is, for example,
20 if they're leaving today, May 9, they working May 8 also and
21 there is no way to get a time sheet from the management. And I
22 just give them money by their own time sheets, ones that they
23 have. If they can tell me I worked 70 hours last two weeks,
24 I'm just going to pay them for 70 hours. And after two weeks
25 the hotel management, they send me the, they send the time

1 sheet to Mr. Kakhkharov, they work like 50 hours. There's 20
2 hours. There's no way to get to fix it.

3 Q Because they're gone?

4 A They're gone. And I already pay them that money.

5 Q So you take their word for it as to how many hours they
6 work the last two weeks?

7 A Uh-huh.

8 Q And if it's wrong where are those students when the
9 tabulation comes in from the hotel?

10 A Back to their country.

11 Q And that's typical Uzbekistan?

12 A Uzbekistan, Russia or Ukraine, whatever they come from.

13 Q So some times is there a shortage then between the money
14 that was paid to the students and what they actually earned?

15 A Yes, it comes up short.

16 Q Did this cause a dispute between you and
17 Mr. Askarkhodjaev?

18 A Yes.

19 Q Tell the Court about that?

20 A First, actually first time it's come up I don't exactly
21 remember the date. I was short around 3 to 4,000. And I told
22 him. He said I have to fix it. But there's no way. You can't
23 help with that. Then it's going up, going up, the short going
24 up, going up to 12,000. And he told me that I have to pay him
25 back because people's, I told him, which is I already paid this

1 money for students and he's suppose to -- the money. Next time
2 we'll be short for next housekeepers which are going to be
3 paid. And he never trust me with that money. Then he starts
4 threatening me. And he told me that I have to pay 5,000 first
5 and my family back in my country, they're paying for his family
6 5,000.

7 Q Now, did you really owe him that money?

8 A No.

9 Q Why did your family pay the \$5,000?

10 A Because he's threatening me. He starts threatening my
11 family, starts threatening myself.

12 Q Describe where these threats took place?

13 A First was in an office. Second time was in a Chipotle by
14 the Plaza. And third time he come up to my apartment.

15 Q Let's talk about the threats at the Westport office. When
16 did those occur?

17 A In office?

18 Q Yeah, when though, approximately?

19 A Approximately November I believe so but I don't remember
20 exactly but it was 2007.

21 Q All right. Tell the Court what happened. What did he
22 tell you?

23 A I told him which is I paid the students and come up short
24 and he never pay me back. He said, I don't care. You have to
25 fix it. How I'm going to fix it, I didn't have like accounting

1 or something to fix it. I told him. He said, I don't care.
2 You have to fix it. It's your problem. That's why you're
3 getting paid. I just left. I can't prove it.

4 Q Did he ever tell you what would happen to you or your
5 family if you didn't make the payments?

6 A Excuse me?

7 Q Did he ever tell you what would happen to you or your
8 family if you didn't --

9 A I couldn't tell them. I just tell them I owe the money
10 for Abror's family and they understanding it. They have only
11 3,000 at home. They borrowed 2,000 from my uncle and they're
12 paying 5,000 to his family. They don't even know what happened
13 yet.

14 Q Did Mr. Askarkhodjaev ever tell you what might happen to
15 you or your family if you didn't make these payments?

16 A Yes.

17 Q What did he say?

18 A He said he just going to kill my family.

19 Q Does he have family also back in Uzbekistan to carry out
20 these threats?

21 A Yeah. His brother. He always threatening like he got a
22 good connection back in the country.

23 Q Has he threatened you or anybody else in your presence
24 prior to that time?

25 A I remember one time he threaten his wife.

1 Q He threatened who?

2 A His wife.

3 Q Who is that?

4 A It was in my apartment. She showed up. They have kind of
5 a conversation and everything is coming up. He said I'm just
6 going -- think about your brother. You have a brother back in
7 the country. You know I have a connection. That's what I
8 heard from his first threat to his wife and then he threatened
9 me.

10 Q What was his wife's name?

11 A Barno.

12 Q Do you remember Barno's last name?

13 A No.

14 Q Is it spelled B-A-R-N-O?

15 A Yes.

16 Q Now when was the next threat? You talked about at
17 Chipotle down on the Plaza. When did that take place?

18 A At the Chipotle?

19 Q Yes. When did those threats happen approximately?

20 A Just approximately just before to get the 5,000 like one
21 day before. I told him my mom, she was in different city. And
22 I told him my mom, she's coming from different city and soon as
23 she's going to get in touch, she's going to pay the 5,000. He
24 said, okay, hurry up. Hurry up. He just threaten me like,
25 hurry up if you don't want no problem.

1 Q Did that occur in December of 2007?

2 A Just a little before December, yeah.

3 Q And the threats that you heard him make toward his wife
4 Barno, when were those made?

5 A Well, one month when he broke up with his girlfriend or
6 wife he living with me about a month. And, Barno, she come to
7 our apartment and she starts threatening to him which she's
8 going to go and talk to the FBI about his, whatever he's doing.
9 And then he started threatening back, it was her brother.

10 Q What did he say he was going to do to her brother?

11 A Exactly same thing. I'm going to kill your brother.

12 Q What was her attitude? What was she like after he said
13 that?

14 A She was upset then she left. She didn't do nothing.

15 Q Now, tell me what happened on December 31 or actually
16 after midnight on January 1 of 2008?

17 A January 2008, yeah, January, December 31, 3:00 a.m.
18 January 1, 3:00 a.m. he showed up in my apartment with
19 R-U-S-T-A-M, S-H-U-K-U-R-O-V. They show up 3:00 a.m.

20 Q Were you expecting them?

21 A No. I was sleeping.

22 Q Tell the Court what happened?

23 A Came to my apartment. I let him in and he started talking
24 you got a short 7,000. You have to pay me right now. And then
25 he punched me in my face with his open hand twice and then he

1 told me that I got one day to give back his money unless he's
2 going to kill me, unless he's going to do something to my whole
3 family then he -- and I can't do nothing. I can't even call
4 the police. I just do whatever he say. I said, okay, okay,
5 just leave me alone. And I just give -- he took my driver's
6 license, social security and he give me one day to give him
7 back money and then he left.

8 Q How long was he in your apartment at 3:00 a.m. on
9 January 1 of 2008?

10 A About an hour, 45 minutes or hour.

11 Q What was your demeanor? What was your attitude? What
12 were you like after this happened?

13 A I was upset, of course, and I don't know what to do.

14 Q What did you do?

15 A I just called INS.

16 Q Did you tell them what happened?

17 A Yeah.

18 Q When did you first contact INS on this?

19 A December 23 or December 24, in the 20s.

20 Q Why did you first contact them then?

21 A I was, it started first after he start threatening me and
22 I don't know what to do. And I just go to INS. I told them
23 whatever I do have and I was actually at that time I didn't
24 have no status with me. I was illegal at that time. And they
25 were shocked to come to INS and tell.

1 Q Was that after you were threatened at Chipotle by
2 Mr. Askarkhodjaev that you initially went to INS?

3 A Yes, it is.

4 Q Now, did Mr. Askarkhodjaev come back to your apartment
5 after 3:00 a.m. on January 1 of 2008?

6 A Next day we have a conversation, phone call. I told him I
7 don't have no money. Do whatever you want. I have no choice.
8 I just called him and told him. And he starts threatening me
9 again. And he showed up in my apartment -- R-A-U-S-T-A-F,
10 S-H-U-K-U-R-O-A -- Girl's name D-A-N-A.

11 Q Do you know how he was able to get into your apartment?

12 A My apartment was like under the lease but she doesn't even
13 know where the apartment was located. He brought that girl to
14 go into my apartment but she didn't even know where the
15 apartment was located. And then went, they went to my
16 apartment, they find out I'm not in there. And they went to
17 office to get a key. They got the key and they go in. Problem
18 is they couldn't find me and then they left. And later on I
19 heard they come back late night and they got arrested.

20 Q So they tried again to get into your apartment?

21 A Uh-huh.

22 Q So he got into your apartment on 3:00 a.m. on January 1?

23 A Uh-huh.

24 Q He then got a key from the office, went back into your
25 apartment the next day?

1 A Uh-huh.

2 Q Then he also went back a third time to try to go back into
3 your apartment and that's when he was arrested?

4 A Uh-huh.

5 Q You indicated that you made a taped statement with
6 Mr. Askarkhodjaev on January 2 of 2008, is that correct?

7 A Yes.

8 Q I'm going to show you what has been marked for
9 identification as Sentencing Exhibit No. 4 and ask if you can
10 identify that? Does that appear to be a transcript of the
11 conversation you had with Mr. Askarkhodjaev on January 2 of
12 2008?

13 A Yes.

14 Q Have you reviewed that taped transcript both in
15 anticipation for trial in this case as well as this sentencing
16 hearing?

17 A Yes.

18 Q And is this transcript a true and accurate depiction of
19 the conversation that you had with Mr. Askarkhodjaev on that
20 day?

21 A Yes.

22 MR. MEINERS: Offer Sentencing Exhibit No. 4, Your
23 Honor.

24 THE COURT: Any objection?

25 THE INTERPRETER: Yes, Your Honor.

1 Who wrote this? Typed this?

2 THE COURT: Mr. Meiners?

3 MR. MEINERS: This was --

4 BY MR. MEINERS:

5 Q Is it your understanding that this was typed by either ICE
6 or the FBI?

7 A Yes.

8 THE INTERPRETER: Did the witness write it himself or
9 was it prepared by somebody?

10 THE COURT: The testimony is it was transcribed. It
11 has been shown to him. He testified that it is a true and
12 accurate transcription of the conversation had that day.

13 THE INTERPRETER: This is the first time I've seen
14 this.

15 THE COURT: Do you object to it? And if so, what is
16 the basis of your objection?

17 THE INTERPRETER: I don't know. This is the first
18 time I've seen this.

19 THE COURT: Mr. Meiners, has this transcript been
20 made available to either Mr. Askarkhodjaev or his counsel prior
21 to today?

22 MR. MEINERS: Yes. Literally over a year ago.

23 THE INTERPRETER: It is the first time I have seen
24 the previous transcript as well.

25 THE COURT: Is that your objection?

1 THE INTERPRETER: Yes.

2 THE COURT: That objection is overruled.

3 Government's Exhibit 4 is admitted.

4 MR. MEINERS: Just for the record, Your Honor, all of
5 the government's exhibits introduced at this sentencing hearing
6 have been turned over to Mr. Askarkhodjaev over a year ago.

7 THE COURT: Proceed.

8 BY MR. MEINERS:

9 Q As I understand it this is a taped conversation concerning
10 a telephone call that you made with Mr. Askarkhodjaev, is that
11 correct?

12 A Correct.

13 Q I want to turn to page 2 and I've highlighted some of the
14 passages. In the middle of the page he says -- we're going to
15 have to use language similar to what is in here so the record
16 is complete.

17 The check is in your hands. Let me deal with it. I
18 will F you up, Jahan. What are you thinking of yourself?

19 What is he referring to?

20 A Before that we talking about money that he just received
21 in cash. And then the check in your hands, let me deal with
22 it. He tried to say that he paid me like all the money which
23 the housekeepers suppose to get that.

24 Q And does he make a threat?

25 A Yeah.

1 Q Does he make a threat in that passage?

2 A Yes. (Unintelligible.)

3 THE COURT: I can't understand you.

4 BY MR. MEINERS:

5 Q Did he indicate he was going to hurt you in that passage?
6 Is that what that is about?

7 A Yes.

8 Q Now, later on in the bottom does he say, does he ask where
9 you are?

10 A Where exactly you are. He's trying to find me. Where
11 exactly you are. Where you calling from? Trying to find out
12 where I'm located.

13 Q I want to have you turn to page 4. Does he indicate that
14 in the second highlighted passage, I will find you in your
15 place. I will find you even if I have to lie in waiting?

16 A Excuse me. What page?

17 Q Page 4?

18 A Uh-huh.

19 Q Do you see the second highlighted passage?

20 A Yes.

21 Q Does he tell you there that he's going to wait for you?

22 A Yeah. Hey, Jahan, where you at? You better tell me. I'm
23 coming to you and I'll have a talk. He tried to find out where
24 I'm located. He using words he wants to talk to me face to
25 face.

1 Q Does he then tell you when he can't find you, go ahead and
2 call the police. I will tear your mother's C in pieces. Just
3 go ahead and call the police?

4 A Yes.

5 Q Do you remember him telling you that about your mother?

6 A Yes, of course.

7 Q And he says FU and F your mother's C, you little son of a
8 faggot?

9 A Yes.

10 Q Is this part of the threats that he made to you both in
11 this conversation and elsewhere?

12 A That day he was that kind of conversation first time with
13 me.

14 Q Did you ask him on page 5 to return your ID and your
15 driver's license?

16 A Yes.

17 Q And does he say F I will hand your mother's C to you. I
18 will personally hand it to you?

19 A Yes.

20 Q On page 6 you ask him what he's going to do to you in the
21 first passage that's highlighted?

22 A Which one?

23 Q Page 6, do you ask him how do I know what you'll do to me?

24 A You will know once you are here. I will hand it to you,
25 okay.

1 Q Then at the bottom of that passage you talk to him about
2 hitting you the previous day?

3 A Yes.

4 Q Does he say that's right and I'm coming to your place?

5 A Uh-huh. Right.

6 Q On the top of page 7 do you ask him why he hit you?

7 A Yes.

8 Q And does he say, hey, stupid, I warned you and you did not
9 tell me what I asked?

10 A Yes.

11 Q And the next passage did he indicate to you I told you
12 that I will tear you apart?

13 A Uh-huh. Yes.

14 Q On page 8 does he continue on the bottom of the
15 highlighted area to threaten you in that manner?

16 A Yes.

17 Q I will F you in your mouth. I will F you in Tashkent and
18 I will F you here if I have to. You are fooling with me now?

19 A Yes.

20 Q What was his demeanor? What does it sound like over the
21 phone when he's saying these words?

22 A He's very upset and he's kind of, he's ready to do
23 anything to get this money. Tashkent is my city back to where
24 my family is.

25 Q Does he also threaten you with people coming to your house

1 tomorrow on the last highlighted passage on page 8?

2 A Yes.

3 Q On page 9 does he ask you who paid the \$5,000?

4 A Yes.

5 Q And did you tell him?

6 A Yes.

7 Q That your family did?

8 A Yes.

9 Q And at the bottom of that passage does he again threaten
10 to do bodily harm to you?

11 A Yes.

12 Q And at the bottom of page 10 you tell him you didn't take
13 a penny?

14 A Yes.

15 Q Did he tell you that he will crack your head open?

16 A Yes.

17 Q Next I want to show you --

18 Well, I have no further questions at this time, Your
19 Honor.

20 THE COURT: Cross-examination?

21 CROSS-EXAMINATION

22 BY DEFENDANT ASKARKHODJAEV:

23 Q (Unintelligible.)

24 A (Unintelligible.)

25 THE COURT: We have to have this in English.

1 BY DEFENDANT ASKARKHODJAEV:

2 Q Did you call the Overland Park police and ask them to come
3 over?

4 A No, I didn't call them.

5 Q (Unintelligible.)

6 THE COURT: Translate, please.

7 BY MR. ASKARKHODJAEV:

8 Q (Through the Interpreter) Did you came to the detective
9 when they arrest me?

10 A No.

11 Q (Unintelligible.)

12 THE COURT: Translate for us, please.

13 BY MR. ASKARKHODJAEV:

14 Q (Through the Interpreter) When we were arrested, did you
15 come and see the detective?

16 A No.

17 Q I had asked to call the detective and my lawyer as
18 witnesses but that hasn't been done.

19 THE WITNESS: I'm sorry, Judge. What he's talking
20 about is when he come to our apartment after what when he left,
21 I went to office. There was one detective sitting in the
22 management office apartment building. And he saw when I'm
23 talking with the management about the key. And probably when
24 agents talk to the detective he was warned about my apartment
25 and when he showed up next time he knows about that.

1 present on the issue of whether or not you were truthful in
2 your proffer to the United States after your plea.

3 THE INTERPRETER: I cannot proceed at this time
4 because I'm unprepared. I asked for some witnesses to be
5 brought and my lawyers didn't do that. And that's why I asked
6 to continue without counsel.

7 THE COURT: Mr. Askarkhodjaev, you entered your plea
8 of guilty in this case in October, specifically October 20 of
9 last year. It has now been a full 6 months since the date of
10 your plea of guilty. The case has been set for sentencing once
11 and continued at your request. There is no reason why you
12 should not be ready to proceed this morning.

13 If your attorneys decline to call witnesses that you
14 thought should be called, it is because they had good and sound
15 reasons for not doing that. I am not going to postpone or
16 continue this hearing. We'll simply move forward.

17 The plea agreement provides that specifically in
18 Section 10G that if the defendant provides full cooperation and
19 truthful testimony in any and all investigations concerning
20 labor leasing fraud that the government will recommend a ten
21 year sentence. But if the defendant fails to provide truthful
22 testimony and full cooperation about the labor leasing fraud
23 the government will recommend 12 years. And in no event will
24 the sentence be lower than 10 or greater than 12.

25 The evidence submitted by the United States this

1 morning was an effort to show that Mr. Askarkhodjaev has not
2 been truthful or cooperative with the United States under the
3 terms of the plea agreement.

4 Mr. Meiners, what else do you have?

5 MR. MEINERS: Nothing, Your Honor, other than just to
6 indicate to the Court that based on misrepresentations we could
7 not in good faith put Mr. Askarkhodjaev on the stand in the
8 Dougherty case and therefore we'd be asking for a sentence of
9 144 months.

10 THE COURT: All right. Mr. Askarkhodjaev, it is now
11 your opportunity to tell me why you think I should impose a
12 sentence of 120 months rather than 144 months. I'm happy to
13 hear anything you may have to say.

14 THE INTERPRETER: The plea agreement was given to me
15 on the 14th of March 2011.

16 At the previous hearing they told that I was given, I
17 was provided a copy of that plea agreement.

18 Then during our phone conversation on April 4, I was
19 asked to refer to the plea agreement which I had sent to be
20 translated into Uzbek.

21 And later they wrote to me, I am attaching another
22 copy of your plea agreement to this letter and then it ended
23 you have mailed the copy of the plea agreement I previously
24 provided you to your cousin for translation to Uzbek.

25 Then on February 28 when you came here referring to

1 me, the translator, I asked to translate and asked them to give
2 me a copy of the plea agreement.

3 When you came to translate our meeting about the PSI.

4 And then at that meeting they said they scanned a
5 copy of the plea agreement right away and only sent it to me on
6 March 15.

7 Had I received a copy earlier I would see these
8 issues and be more prepared.

9 And three documents weren't fully translated to me,
10 the indictment, the presentence investigation report and the
11 plea agreement.

12 I was repeatedly told that I would get 27 years and I
13 was scared and because of that I entered into the plea
14 agreement and I even fainted at that hearing when I was
15 accepting the plea.

16 I was -- I was scared and that is the reason I was
17 put in the position to accept those terms, that agreement.

18 The statement addressed to me, please say that you
19 didn't translate those documents fully, completely verbatim,
20 the plea agreement word for word, the entire document.

21 Question to me again. You haven't seen the entire
22 indictment, true? Right?

23 Please say again request to me. I'm just
24 translating.

25 The entire indictment wasn't translated to me but I

1 don't know exactly what I was charged with.

2 I wasn't explained in detail.

3 And now I've got a translation of the PSI and there
4 are some inaccurate or untrue things in it. Many, many things.

5 THE COURT: There are a number of objections to the
6 factual findings contained in the presentence report,
7 Mr. Askarkhodjaev. I have announced that I'm not going to rely
8 upon any of those factual allegations to which you have
9 objected. I have granted your only objection to the
10 presentence report.

11 The question now is whether the United States has
12 presented sufficient evidence to justify its position asking
13 for a sentence of 12 years rather than 10 years.

14 THE INTERPRETER: Not all of my objections have been
15 raised. That is why I don't even know what to say. I didn't
16 know that would happen this way.

17 THE COURT: Mr. Epps, is there anything you want to
18 say in response? I'm going to give you an opportunity to
19 protect yourself if you wish to do so, and Mr. Montgomery?

20 MR. EPPS: Judge Smith, at this time Mr. Montgomery
21 and I will rely on the record that we set forth before Judge
22 Sarah Hays at the previous hearing as to what we provided
23 Mr. Askarkhodjaev, when we provided it. But I will quickly say
24 that the gentleman sitting to my left, Mr. Montgomery, in
25 particular has spent an inordinate amount of time holding

1 Mr. Askarkhodjaev's hand throughout our representation and I'm
2 proud of the work that Evan did. And I know that I personally
3 have invested hundreds and hundreds and hundreds of hours into
4 Mr. Askarkhodjaev's case and personally going over evidence
5 with him. But let's rely on the record that we created in
6 front of Judge Hays weeks ago. Thank you, Judge.

7 THE COURT: For the record I have reviewed the
8 pertinent portions of that transcript as they relate to
9 counsel's representation.

10 Mr. Askarkhodjaev, is there anything else you want to
11 say before I announce my decision this morning?

12 THE INTERPRETER: On June 23, 2010 I sent a letter to
13 my attorneys raising the objections that I was hoping to raise
14 today regarding the testimony of Jakhongir, the last witness.
15 This was made a long time ago. There is a copy of this letter.

16 THE COURT: If Mr. Askarkhodjaev's comments, in
17 response to my invitation, are designed as support for a motion
18 to withdraw his guilty plea, any such motion would be and is
19 hereby denied. I see no fair and just reason to allow
20 Mr. Askarkhodjaev to withdraw his plea of guilty.

21 Is there anything further you want to say before I
22 announce my decision?

23 THE INTERPRETER: I thought it was rule of law in the
24 United States. That's all.

25 I take responsibility for the actions that I took but

1 there were some things that were inaccurate or untrue, there
2 were many things.

3 That's it.

4 He apologizes. If I said something wrong I
5 apologize.

6 THE COURT: Mr. Meiners, anything else on behalf of
7 the United States?

8 MR. MEINERS: No, Your Honor. Thank you.

9 THE COURT: The plea agreement between the parties
10 that I approved back in October of last year calls for a
11 sentence of between 10 to 12 years of imprisonment. The plea
12 agreement specifies the conditions under which the United
13 States would be permitted to ask for a sentence at the top end
14 of that range. We have heard testimony and viewed exhibits
15 this morning offered by the United States to justify its
16 request for a sentence of 144 months.

17 I'm not sure how useful it is to review all of the
18 sentencing factors in 18 USC 3553 when the agreement between
19 the parties and my acceptance of that agreement locks me in to
20 a sentencing range of 10 to 12 years but I think that some
21 mention of the factors is appropriate and necessary.

22 I'm told that I should impose a sentence sufficient
23 but not greater than necessary to comply with the purposes of
24 the sentencing statute considering the nature and circumstances
25 of the offense and the history and characteristics of the

1 defendant.

2 Without doubt this is the largest, most widespread
3 racketeering conspiracy of this kind in the history of this
4 district and perhaps one of the largest in the United States
5 ever.

6 Mr. Askarkhodjaev was the clear ringleader, organizer
7 and the main reason the conspiracy was as effective and
8 successful as it was without detection.

9 There were hundreds of victims, people who came to
10 the United States in response to the promise we hold out to all
11 the immigrants who come to this country that they will be
12 treated fairly and that they would experience freedom. To the
13 contrary they were treated very unfairly and in many cases
14 their freedom was restricted by the conspiracy in this case and
15 by Mr. Askarkhodjaev, himself.

16 Turning to the defendant's history and
17 characteristics. He is a criminal history category 1. In my
18 view that history, criminal history category drastically
19 underrepresents his criminal conduct over the last 8 to 10
20 years. I think that the facts of this case would justify an
21 upward departure to a higher criminal history category than the
22 one he received in the presentence report.

23 One of the troubling aspects of this case and many
24 other cases is that I see talent, intelligence and almost
25 genius used for evil purposes. Had Mr. Askarkhodjaev spent his

1 energy working in a lawful business activity I think he would
2 have excelled. I think he would have excelled in a legitimate
3 enterprise just as he excelled in this illegitimate enterprise.
4 It is a terrible waste. It is a terrible misuse of God-given
5 talents and intelligence.

6 I do not believe that the truth is in you,
7 Mr. Askarkhodjaev. I think everything you see is filtered
8 through a screen of self interest and greed. And I will tell
9 you that but for the plea agreement entered into in this case I
10 would impose a sentence much larger, much longer than the one
11 the plea agreement allows me to impose. Given the breadth and
12 vastness of this conspiracy and the effect it had on people's
13 lives, a sentence of 20 years would be modest for the offense
14 you committed.

15 The sentence I impose should be one which reflects
16 the seriousness of the offense, one that promotes respect for
17 the law and one that constitutes a just punishment.

18 In my view a sentence at the highest end of the one
19 agreed upon is necessary and appropriate to address those
20 concerns and probably is insufficient to address those concerns
21 but I'm nevertheless bound by the agreement.

22 The sentence I impose should be one which has a
23 deterrent effect. One which will deter you from reoffending.
24 One which will deter others from doing what you and others did
25 in this case. In my view a sentence at the top end of the

1 agreed sentencing range is necessary and again probably
2 insufficient to address that concern.

3 The sentence should be one which protects the public.
4 You will be deported upon completion of your sentence. The
5 only way you will get back into this country is to enter it
6 illegally. I hope that you do not do that.

7 Protection of the public is probably less of a
8 concern for the United States than it is for the nation of
9 Uzbekistan.

10 The sentence should be one which considers the kinds
11 of sentences available and affords correctional treatment in
12 the most effective manner. And it should be one which avoids
13 unwarranted sentence disparities between you and others who
14 have been convicted of the same or similar offense across the
15 country and you and others within this conspiracy.

16 Your attorneys point out that many of the others
17 involved in this conspiracy received modest sentences compared
18 to the one that you have agreed to accept. I respectfully
19 disagree with your attorneys. I think that the difference
20 between you and the others is enormous. You are the one
21 constant in this conspiracy. You are the reason it succeeded.
22 The others were mere role players in my view. And I think that
23 difference justifies a much different sentence.

24 So having considered the evidence that I heard this
25 morning, having presided over the Dougherty trial and heard the

1 evidence and hearing the evidence in that case, having
2 considered the guideline range and having considered the
3 factors in 18 USC 3553(a), my judgment is probably a foregone
4 conclusion.

5 Pursuant to the Sentencing Reform Act it is the
6 judgment of this Court that the defendant, Abrorkhodja
7 Askarkhodjaev, is hereby committed to the custody of the Bureau
8 of Prisons to be imprisoned for 144 months on each of Counts 2
9 and 86. And 60 months on each of Counts 63 and 132. All will
10 be served concurrently for a total term of imprisonment of 144
11 months.

12 Upon release the defendant will be on supervised
13 release for 3 years consisting of 3 years on each of Counts 2,
14 83, 60 -- 86 rather, 63 and 132. Those terms to run
15 concurrently.

16 He lacks the ability to pay a fine. The fine is
17 waived. I hereby impose special assessments of \$100 on each
18 count of conviction for a total of \$400 which is due and
19 payable to the United States immediately.

20 I enter an order of restitution in the sum of
21 \$167,246.14 to the individual victims identified in the
22 presentence report, \$12,000 to Mr. Kakhkharov and \$191,346.14
23 to Brier Payne Meade Insurance Company. Those sums are due
24 now. They're due in a lump sum and they're payable
25 immediately.

1 The restitution to the individual victims will be
2 paid in the amounts listed in the presentence report. I'm not
3 going to read all of those into the record.

4 Payment to the individual victims will be joint and
5 or made joint and severally with co-defendants Alexandru
6 Frumusache, Viorel Simon and Andrew Cole.

7 The additional restitution will be paid to
8 Mr. Kakhkharov, to Brier Payne Meade Insurance Company and the
9 Internal Revenue Service as reflected in the presentence
10 report.

11 While restitution is owed the defendant will be
12 required to notify the United States Attorney of any change of
13 address within 30 days. And notify the Court and the United
14 States Attorney if there is a material change in his economic
15 circumstances.

16 Interest on the restitution obligation is waived.

17 While on supervised release the defendant will be
18 required to comply with the standard conditions adopted by this
19 Court and these special conditions.

20 If he is not deported he must report to the probation
21 office within 72 hours following his release. If he is
22 deported, he will not be required to report to the probation
23 office but he will be prohibited from re-entering the United
24 States illegally or without proper documentation.

25 If by some strange occurrence he is granted

1 permission to re-enter the United States, he must report to the
2 probation office within 72 hours following any such re-entry
3 and continue to report as directed for the remainder of any
4 unexpired term of supervised release.

5 The restitution balance identified earlier is due
6 during the first 30 months of supervision.

7 I'm not going to impose the other routine special
8 conditions in this case because if Mr. Askarkhodjaev re-enters
9 the United States he will very likely be arrested immediately
10 and brought back in for violation of special condition No. 1.

11 Mr. Askarkhodjaev is hereby remanded to custody for
12 service of the sentence imposed.

13 Mr. Askarkhodjaev, you have the right to appeal the
14 decisions reached in this case. With few exceptions any notice
15 of appeal must be filed within 14 days. If you are unable to
16 pay the cost of appeal, you can apply for leave to appeal as a
17 poor person. If you ask, the clerk will file the notice of
18 appeal for you. If you do not ask, that will not happen.

19 Your plea agreement limits your right to appeal.
20 That limitation is found in Section 16 of the plea agreement.
21 I'll tell you that the Court of Appeals has generally enforced
22 those kinds of waivers. If you believe that yours should not
23 be enforced then you may present that argument to that court.

24 Mr. Askarkhodjaev, is there anything else from you
25 this morning?

1 THE INTERPRETER: He's asking about the drug
2 treatment program, the request that was made.

3 THE COURT: In more than 15 years as a judge I have
4 never denied a request for drug treatment. I am sorely tempted
5 to do so in this case because, Mr. Askarkhodjaev, I don't think
6 you have any intention of using that drug treatment for the
7 purpose for which it's intended. I think that your sole
8 purpose for asking for it is to get time off your sentence.
9 However, on the off chance, the remote possibility that it may
10 benefit you, I will recommend you for the program.

11 Anything else?

12 THE INTERPRETER: Thank you.

13 THE COURT: Mr. Meiners, anything else from the
14 United States?

15 MR. MEINERS: Just briefly, Your Honor. There's been
16 a change in the amount of restitution that the victims are owed
17 in the addendum to the presentence report. The extra
18 restitution is \$172,146.14, which changed the \$152,751.14
19 figure.

20 THE COURT: The addendum that I'm looking at is dated
21 May 6. Is that the one you're looking at?

22 MR. MEINERS: This addendum is actually April 1,
23 2011.

24 PROBATION OFFICER: Your Honor, if I might, the
25 172,146.14 was the amount listed in the presentence report just

1 with some of the changes that have occurred, that information
2 didn't get transferred into the memo to the Court about it.

3 THE COURT: Say the amount again.

4 PROBATION OFFICER: The correct amount is \$172,146.14
5 to the individual victims that are outlined in the presentence
6 report.

7 THE COURT: Ms. Whitworth, if I summed the numbers
8 assigned to individual defendants in the May 6th
9 recommendation, does that come to -- it does come to 172. All
10 right.

11 The total amount of restitution due the individual
12 victims will be \$172,146.14.

13 MR. MEINERS: Thank you, Your Honor.

14 Then, finally, just for the record we would ask the
15 Court enter its order formally dismissing all counts not pled
16 guilty to by the defendant including Count 2, Count 63, Count
17 86 and Count 132.

18 THE COURT: The government's motion to dismiss all
19 counts to which the defendant did not enter a plea of guilty to
20 is so ordered. Anything else?

21 MR. MEINERS: No, Your Honor. Thank you.

22 THE COURT: Thank you all. We are adjourned.

23 DEFENDANT ASKARKHODJAEV: Excuse me, Judge.

24 THE COURT: Yes?

25 THE INTERPRETER: His vehicles were confiscated by

1 the government. What happens to them? Because some of them
2 belong to the company. My lawyers weren't able to give me an
3 answer on that. And also my documents, birth certificate and
4 such, I also would need my driver's license.

5 MR. MEINERS: Your Honor, the vehicles would be
6 subject to forfeiture. We're attempting to get any documents
7 back to Mr. Askarkhodjaev at this time that is not of any
8 evidentiary matter including the birth certificate.

9 THE COURT: Do you understand that? The vehicles
10 will be subject to a lawsuit by the United States asking that
11 they be forfeited as part of the gain realized by the
12 conspiracy. All personal documents of no evidentiary value
13 including your birth certificate will be returned to you.

14 THE INTERPRETER: There will be a different lawsuit,
15 right?

16 THE COURT: Yes.

17 Anything further?

18 MR. EPPS: Yes, Your Honor. Our termination is still
19 in place, correct?

20 THE COURT: Your termination is still in place. It
21 is very likely that if a notice of appeal is filed that the
22 Court of Appeals will ask you to serve as appellate counsel.
23 Then that issue will be theirs to resolve.

24 MR. EPPS: I just wanted to be sure that
25 Mr. Montgomery and I did not have a responsibility to

1 communicate with Mr. Askarkhodjaev over the next couple weeks
2 to see what he wants to do. Is that correct?

3 THE COURT: You have no obligation to initiate any
4 contact with the defendant. If he calls you as standby
5 counsel, I'll expect you to respond.

6 MR. EPPS: We will do so. Thank you, Judge.

7 THE COURT: We're adjourned.

8 * * *

9 CERTIFICATE

10 I certify that the foregoing is a correct transcript from the
11 record of proceedings in the above-entitled matter.

12
13 5/27/2011

/s/ Cynthia M. Johnson

14 Date
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